

Service charges for seaming or beveling glass are costs of doing business that are not excludable from gross receipts subject to Retailers' Occupation Tax liability. See 86 Ill. Adm. Code 130.410. (This is a PLR.)

May 11, 1999

Dear COMPANY:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (see enclosed), is in response to your representative's letter of September 1, 1998. Review of that request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of the enclosed copy of Section 1200.110 appears to be contained in that request. This Private Letter Ruling will bind the Department only with respect to COMPANY for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither COMPANY nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

Your representatives letter stated and made inquiry as follows:

Please refer to your conversations with PERSON of this Firm regarding a Private Letter Ruling Request for the above-referenced Taxpayer.

On behalf of COMPANY, I submit this Private Letter Ruling Request pursuant to 2 Illinois Administrative Code § 1200.110. I have enclosed a copy of Illinois Form 2848, Power of Attorney authorizing this Firm to submit this Application on behalf of COMPANY. See Enclosure 1.

This request is sought for all tax periods during which the related glazier costs will be incurred. COMPANY is not currently under audit by the Department of Revenue or any other taxing authority. To the best of our knowledge, the Department has not ruled on the same or a similar issue for our client or any of its tax predecessors, nor has the issue been submitted to the Department and withdrawn by our client before the Department issued its Private Letter Ruling.

STATEMENT OF MATERIAL FACTS

COMPANY is a glazier operating from its business location ADDRESS. Among other services, COMPANY sells glass over the counter. When a customer comes in to order a piece of glass, it is cut from a large pane of glass. There is a retail sale price for the piece of cut glass for the customer. Retailers Occupation Tax ('ROT') is charged and collected on the sale price of that item.

On occasions, some customers request that the edges of the glass be 'seamed' or 'beveled'. Such special services require skill and special training to provide a good quality product. COMPANY's customers have requested that this 'seaming' or 'beveling' work be separately listed on its invoices. COMPANY has not charged ROT for this work on the theory that it is labor, and not a part of the sale price of the glass product.

Recently, COMPANY underwent a Retailers Occupation Tax audit by the Department. The auditor, took the position that the 'seaming' or 'beveling' work was part of the sale price of the product. Consequently, she concluded that these labor charges were not exempt from ROT. However, the auditor and I noted that, after research on this particular issue, there is nothing specifically on point addressing glaziers and their 'seaming' or 'beveling' charges.

TAX ISSUES AND TAXPAYER'S POSITION

Auditor provided COMPANY with Private Letter Ruling 91-0392, dated May 17, 1991. This PLR addresses a paper supplier who cuts paper to its customer's specification. The Legal Services Bureau took the position that the charges for cutting the paper are subject to ROT because they are a cost of doing business.

Under 86 Illinois Administrative Code § 130.410, which addresses the calculations used to arrive at gross receipts, no expenses or costs are deductible in arriving at gross receipts. Among the examples cited are labor charges, service costs, clerk hire, etc. If one stops their research at this point, one could conclude that the Department's position is without exception.

However, 86 Illinois Administrative Code § 130.450(a), which addresses Installation, Alteration, and Special Service Charges, states that retailers who sell tangible property will sometimes install, alter, or perform some other special service with respect to the item being sold. Taxability of the Installation, Alteration, or Special Service Charges depends on the nature of the transaction in which the tangible personal property is sold. If the charge is included in the selling price of the item being sold, then the cost of the Installation, Alteration, or Special Service Charge would be subject to ROT.

However, the exception to this rule occurs when the Alteration, Installation, or Special Service Charge is separately stated on an invoice that is signed by the purchaser so as to make the invoice a contract reflecting the buyer's and seller's intent. If the buyer and seller agree on the Installation, Alteration or Special Service Charges separately from the selling price of the tangible personal property being sold, then that specific charge is not part of the selling price. Thus, it would be deductible from gross receipts when calculating ROT liability. See 86 Illinois Administrative Code § 130.450(b).

As previously stated, COMPANY bills separately for these 'seaming' or 'beveling' charges, which constitute Special Services. Glass cutting is a special skill, requiring

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specialized training. For your reference, I have enclosed copies of sample invoices to show how COMPANY bills its customers. See Enclosure 2.

It is COMPANY's position that these 'beveling' or 'seaming' charges are Special Service Charges exempt from ROT. COMPANY's customers do not have to obtain this particular special service from it, but its customers value the expertise possessed by COMPANY by specifically requesting it. In our client's situation, the 'seaming' or 'beveling' charges would be tax exempt under the Regulation.

The Private Letter Ruling provided by Auditor, which addresses paper suppliers, is not analogous to COMPANY's situation because paper suppliers use heavy-duty machinery to cut paper to a special size. The 'beveling' or 'seaming' that is done to glass is a special service requiring special hand-held equipment and human skill.

RULING REQUESTED

COMPANY respectfully requests that the Department issue a Private Letter Ruling that 'seaming' or 'beveling' charges are exempt from Illinois Retailers Occupation Tax and local taxes, if they are separately stated charges on its invoices.

If you have any questions, please contact me to discuss this matter.

Thank you for your time and attention.

After review of the materials provided with your letter, we believe that the service charges for seaming or beveling glass are costs of doing business that are not excludable from gross receipts subject to Retailers' Occupation Tax liability even if separately stated on an invoice. See the enclosed copy of 86 Ill. Adm. Code 130.410. COMPANY's customers are merely buying either standard glass, beveled glass, or seamed glass. The fact that seaming or beveling glass requires special skill does not transform these transactions into situations covered by subsection (b) of the enclosed copy of 86 Ill. Adm. Code 130.450.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

ST 99-0022-PLR

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